

The new sharing ethic in Cyberspace

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Abstract

The Internet is a new medium that allows every person who is connected to it to become a publisher and to be able to share ideas and information. This is a phenomenon that I call the “New Sharing Ethic”. This new sharing ethic is the subject of the present paper, in which the implications of the free flow of information in Cyberspace will be discussed.

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Introduction

Thomas Jefferson once said "*ideas should freely spread from one to another over the globe*". However, in our modern society, ideas are owned by means of Intellectual Property legislation such as patents and copyright, which means that there is a cost in distributing them; there is a market for information.

In opposition to this, the Internet has risen as the networked society in which every person is allowed to speak their mind and query the world to create their own point of view. Never before have we had the breadth and scope of opinion and voice, and the amount of information exchanged has to be considered as its most important asset.

In recent years there has been an increase in the commercialisation of Cyberspace, and thus an attempt to enforce the traditional methods of ownership of intellectual creations. Nevertheless, for the most part the exponential increase of information available on the Net has come from the average user by means of sharing information freely. The development of the Internet has proved to be the perfect ground for this new sharing philosophy to develop because one of the basic ideas behind the new network is the free flow of information. This is a phenomenon that I call the “New Sharing Ethic”, which is opposed

to traditional concepts of strong protection of ideas and of the proprietary nature of information.

It is important to stress that the sharing that will be discussed is the free sharing of works by their authors or inventors, as opposed to the common sharing of other people's works that is prevalent in many sectors of the Internet, in particular music, software, literary works and images, which falls under the category of copyright infringement, plagiarism and piracy. Although this area is one of immense interest to the future of Intellectual Property, it is felt by the author that this is a separate issue and requires a different type of analysis.

The present paper covers this new sharing ethic, which will be addressed in two parts. The first will look at the philosophical justifications for the new ethic, and the second will look at the practical ways in which Internet users are eroding traditional intellectual property concepts.

1. The philosophy of sharing

1.1 Why do we have intellectual property?

Sharing is not a new concept. The modern proprietary system of ownership of ideas is a relatively recent development in human history. The ancient Greeks were the first ones to attribute authorship of works to individuals. The Hebrew Talmud made it compulsory to oral contributors to a story to be identified, constituting an early form of moral authorship rights. In Rome, literary production became an accepted occupation for the wealthy classes, and some writers survived on a system of patronage (Bettig, 1996). It is obvious then that in the past copying another person's work was considered immoral. Authors then were given moral rights to their works, but no economic reward. However, these works were still shared freely.

Intellectual Property as a moral right derives from natural law ideas that see it as inherent to the very nature of creating because it carries the author's integrity and personal reputation (Philips & Firth, 1995). It is more commonly found in countries with a civil law system that draws from concepts of natural law. In the specific case of copyright, every author will be entitled to have the moral right to control his/her work and to make sure that it is rightly attributed under his name. This right cannot be sold, and remains with the author even if he has given away the right to profit from his work.

Despite the fact that the origins of intellectual property may be credited to the concept of moral rights, the real impulse to this legal institution can be attributed to the desire of authors and inventors to obtain an economic remuneration from their work. Such was the case of the birth of the patent system during the reign of Elizabeth I, as it was felt that there was a need for the enactment of a method by which an inventor could stop others from copying and unfairly profiting from their work (Bainbridge, 1999). In copyright, the first legislation was the Statute of Anne of 1709¹, which was created in part as a response to widespread literary piracy that financially affected many authors. The United States Constitution recognised the nature of copyright as an economic reward to authors. Later, the US Supreme Court recognised this fact by stating that the "*encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors...*" (Mazer v Stein, 347 US 201 (1954); cited by Carlson, 1997).

Some types of intellectual creation in present times require large monetary investment (i.e. scholarly research, software and motion pictures to name a few). It is only fair that authors and inventors should have an adequate way to receive reimbursement for that investment by obtaining a property right over their work.

Nevertheless, this is not the only consideration when analysing the justification of intellectual property because this area also serves a very important social role, such as the dissemination of information. It is said that it is in the best interest of the public to disseminate information to the widest possible audience (Davies, 1994).

The main challenge for modern intellectual property is to strike a balance between the economic and social interests, as both are at odds in many situations.

1.2 Criticism to Intellectual Property

Perhaps the most common source of criticism towards intellectual property derives from the dichotomy between protecting author's rights and the public interest, which has been briefly talked about in the previous section. Some of the critics of copyright think that it is in the best interest of society to disseminate knowledge to the widest possible number of members, and giving authors a limited property right goes against this goal (Irlam, 1994).

¹ The Statute of Anne is the first true Copyright legislation in the World; it receives its name from Queen Anne of England. The Statute was enacted after a series of failed attempts to regulate licensing of literary works by means of a limited property right. Many literary celebrities of the time, like John Locke and Jonathan Swift, had a say in its creation after they had suffered from the piracy of their works.

This dichotomy between the economic and social justifications for intellectual property are being enhanced in present times by what has been described as an excessive reliance by the courts of law on the first in detriment of the later (Samuelson, 2000). Volkman agrees with this view and points out that the whole economic justification for intellectual property, and in particular in copyright, relies heavily on presuppositions that have not been thoroughly tested, and will likely never be tested (Volkman, 2000). This means that everybody assumes that the economic justification is sound, but there is no evidence to support it, on the contrary, the Internet, as it will be shown later, is providing plenty of evidence to the contrary, that people will still create regardless of obtaining economic rewards from their works.

Other premises regarding intellectual property are also being challenged. Hettinger for example points out that intellectual creations are not the result of individuals, but the result of a society as the creators do not exist in a vacuum, so that they cannot claim full credit for their creations (Hettinger, 1989).

Another basic contention against the modern system of intellectual property comes from a historical analysis of its development, in particular towards the development of copyright and the modern perception of authorship. Some writers point out that our present understanding of authorship comes from a paradigm shift that changed the figure of the author from a person using the accumulated knowledge of society to a concept of individual creation. This would mean that philosophical ideas of possessive individualism, such as those of Locke, and the development of Romantic literary thought, are the actual cause for the present copyright system (Fatima, 2000). The idea that authorship is basic to the present legal structure is very important, as we start losing the concept of the Romantic individual author. As a matter of fact, the erosion in what is perceived as an author is part of the reason why there is an increased criticism of intellectual property in general (Woodmansee, 1994).

1.3 The Free Flow of Information

Besides the general criticism to intellectual property that has been explained, there is an additional group of writers that are attacking its proprietary nature in light of the development of the digital society, in particular the Internet. There are those who consider that society should strive towards providing less importance to the economic aspects of intellectual property and enhancing the free flow of information for the common good.

The basic concept behind the free flow of information is that ideas themselves are not proprietary, that ideas belong to humanity and that only the expressions of the ideas should be considered as belonging to certain individuals. They argue that in Cyberspace the old concepts of copyright and patenting are no longer valid because they cannot be properly enforced, and ideas should be available to the largest number of people (Barlow, 1993).

The idea of the free flow of information is intrinsically related to some of the more traditional criticisms of intellectual property that have been mentioned, in particular the fact that information is dynamic and cumulative as authors and inventors often rely on the works of people who came before them. Talking about information, Michael McFarland points out that “...*it is the product of human thought and not itself corporeal, information is constantly changing, growing, combining, and creating offshoots. An intellectual work never springs pure and original from a single human mind. There are always influences. The language, the characters, the themes, and the structure of a novel all have their predecessors*” (McFarland, 1999).

In particular to the Internet, John Perry Barlow has been one of the most vocal proponents of the free flow of information. He believes that information is action, is a life form that strives to be free, change and replicate; but also warns that it can perish. His most interesting proposal is that the Internet has created an environment in which information is the currency and that information obtained should be paid with more information. Intellectual property does not have a place in this scheme, such as ownership of money is not true in a sense. People normally use money to exchange goods, in Cyberspace people use information to obtain more information (Barlow, 1993).

Richard Stallman, one of the major defenders of free software on the Internet argues that the social restrictions imposed by the proprietary nature of intellectual property legislation is damaging to the social welfare because it obstructs access to a work, it damages the social cohesion and obstructs the improvement and further development of ideas (Stallman, 1995). Because of the damage caused by the restriction of works, in particular software, Stallman believes that society should not allow ownership of computer programs. Responding to the argument that if software is free authors will not be encouraged to get involved in the creative process, Stallman argues that this view is restrictive and does not consider that people not always create with profit on their minds, that some people create because of their fascination with a field of work.

However, the more extreme views of Stallman and other advocates of free software are not universally shared by other proponents of the free flow of information, in particular the advocates of open source software. Eric Raymond for example writes that it is imperative to understand that the sharing of information can only result in improvement of the products and that sharing is beneficiary for society. He also agrees with Stallman that there are many creators who will be content with non-economic rewards for their labour, such as recognition, but he disagrees that this is always the case. One of the main points he makes is that there is a certain type of proprietary nature to open source, and even recognises that there are many occasions in which commercial creations work better than free ones (Raymond, 1997).

Despite these important differences within the proponents of a model of freedom of information, the common denominator is the recognition of the importance of sharing in a digital environment. But these discussions do not take place in an intellectual bubble, perhaps one of the most compelling arguments that support the resurgence of the philosophy of free flow of information is a practical one; sharing is already taking place in cyberspace.

2. The Internet revolution

2.1 Hacker Ethics

The new sharing ethic does not only receive support from academics, there are many examples of support from regular users throughout the Internet, and this can be best seen in the often-demonised hacker community. Contrary to common belief, there is a philosophy and a set of ethics followed by hackers throughout the Internet. Hacker philosophy is established by the fact that the Internet is a free medium that cannot be regulated; it is a virtual anarchy, even with its own declaration of independence of Cyberspace (Barlow, 1996). In this scheme of things, the general feeling is that the Internet has no laws, but hackers achieve a sense of community in which sharing of information becomes essential. In fact, the first rule of hacker ethics actually states that “*information-sharing is a powerful positive good, and that it is an ethical duty of hackers to share their expertise by writing free software and facilitating access to information and to computing resources wherever possible*”. (The Hacker’s Dictionary).

Anthropologist Steve Mizrach analysed several hacker texts and came up with a set of common ethical practices that could be seen throughout the computer underground

community. Among those was the elevation of sharing as an ethical hacker imperative and the expression that information is alive and wants to be free. The use of the word “free” has three related aspects, freedom of movement of information, freedom from control and free of cost. This is exemplified by one of the hacker maxims: “*Information increases in value by sharing it with other people. Data can be the basis for someone else’s learning; software can be improved collectively*” (Mizrach, 1997).

One of the examples of the pervasiveness of this new philosophy can be seen by the motto of *Eminence*, one of the many groups of Internet hackers that provide small applications for breaking copyright protection in computer software. Their motto is “*Enjoy the power of teamwork*”. Groups similar to this one are made up of individuals who are highly skilled in programming, probably even employed throughout the computer industry, but who spend large amounts of time and resources circumventing software defences to be able to provide free software. For them the sharing of information has become a way of life, and expresses how the people that know it best view the sharing of information on the Internet. Some of the particular examples of the everyday use of the sharing ethic will be seen next.

2.2 Organised resistance

Perhaps one of the most interesting cultural developments caused by the development of the Internet is the birth of many Net based civil liberties and individual rights organisations that advocate for the individual right to allow information to flow freely. These groups work on several issues trying to present an organised front that advocates strongly for an opening of the debate about the existing intellectual property legislation. Most of these groups try to achieve their goals much in the same way in which other pressure groups on the Internet work, by using political lobbying, by obtaining monetary and moral support from normal users and by writing manifestos, press releases, articles and communication that express their opinions. The Internet presents a perfect ground for single-issue pressure groups to express their opinions and increase their support (Goddard, 1996).

One of such groups is the Electronic Frontiers Foundation (EFF, <http://www.eff.org>) an organisation dedicated to encourage a responsible free flow of information and that strives to safeguard freedom of speech and privacy rights in Cyberspace. A similar organisation dedicated to the free flow of information is the Digital Future Coalition (DFC, <http://www.dfc.org>).

Hacker philosophy and ethics find their maximum expression in the Free Software Foundation (FSF, <http://www.fsf.org>). This is a project that advocates that software should be free, and has actually made steps to prove that it is a viable possibility. This movement distributes free software and encourages programmers to use Copyleft, which is a way in which software code is passed on, but anyone who redistributes the software, with or without changes, must pass along the freedom to further copy and change it. This places a burden to the person transferring the software; the burden is that the software must remain free. This is different from just placing software in the public domain because the person making use of the free code can subsequently copyright it (Lambert, 2001).

Perhaps the most successful example of the success of the sharing ethic in an organised form is the open source code revolution spearheaded by the Linux operating system. Linux began as a hacker project by programmer Linus Torvald, who created a clone of the UNIX operating system and placed it on the Internet for free. The code has been subsequently improved many times, and being free, many companies are now distributing their own Linux version (Lambert, 2001).

Small software companies have found in the Web a powerful, yet dangerous ally to distribute their software. The advantages of sharing software by means of free distribution schemes are those of promotion, small firms cannot compete with software giants, so their best strategy to increase the popularity of their programs is to make them available online. There are four ways in which their programs are offered online: direct download, shareware, demos and freeware (Free Software Foundation, 2001).

Another interesting group that advocates sharing online is the Project Gutenberg is a non-profit online library that places public domain books on the Internet based on the perceived necessity of encouraging the flow of information online. The Project is based on the concept of Replicator Technology, which states that *“once a book or any other item (including pictures, sounds, and even 3-D items can be stored in a computer), then any number of copies can and will be available”* (Hart, 1999).

2.3 The everyday nature of sharing online

2.3.1 Sharing and culture

One of the best indicators about the increase of the online sharing phenomenon can be seen in a noticeable increase of coverage of the nature of intellectual property in popular culture and the media. In a recent movie called *“Anti Trust”* the debate is brought to the silver

screen, albeit in a rather naïve fashion and with the typical Hollywood dilution of the deeper issues. The movie however ends with a catchy line: “*Knowledge belongs to the world*”. This movie is not alone, other productions like “*Hackers*”, “*Pirates of Silicon Valley*” and “*Swordfish*” touch on the issues of the lone programmer against the corporate world. Other interesting example is the growing popularity of the anarchic, post-Seattle, anti-globalisation, anti-capitalism, anti-copyright stances of the fringe Internet communities. Being against the establishment is perceived as the ultimate cool (Manjoo, 2001).

Sharing then becomes a cultural phenomenon that is taken by more and more people. There are plenty of examples of music bands providing free access to their songs in sharing sites such as MP3.com (<http://www.mp3.com>) and Audiogalaxy (www.audiogalaxy.com). It may be disingenuous to believe that such efforts are not driven by an ultimate desire to profit from their works, but on the meantime sharing is working for these small time bands. Small inventors are also finding incentives to sharing their knowledge online, such as with the Social Inventors Project (<http://www.globalideasbank.org>).

2.3.2 Community

But it is not just the prominence of the Cyberspace culture what is driving this relentless march towards a new sharing ethic. There is a strong sense of community taking shape on the Internet, people from around the world realise that they can find anything on the Internet for free, and a sense that you also have to provide the community with information follows. Mowbray and Bays use the cookie analogy to explain this phenomenon. They notice that there is a gift philosophy taking shape on the Internet, they say that “*Individual Internet users donate content for other Internet users to use free of charge. In return, each individual receives access to all the content made available by others. The amount an individual receives is much more than they could ever produce, so the gift economy works in the interest of Internet users.*” (Bays and Mowbray, 1999). This gift economy works as a cookie recipe sharing, where a community is encouraged to share their own cookie recipes to the wider audience.

Another interesting phenomenon that helps to underline the nature of the online community is the relative anonymity provided by the Internet. Users across the Net post anonymous messages on the most various issues, many times using Cyberspace alter egos, known as avatars thanks to Neal Stephenson’s novel *Snow Crash*. These examples serve to

prove the further erosion of the traditional concepts of authorship, if an author cannot or is not willing to be identified, how can the work have proprietary rights according to the conventional system?

2.3.3 Widespread sharing

It is only fair to ask the question of whether sharing is only a trend that can be seen in some extreme and anarchic Internet fringes. The answer appears to be a resounding negative. Mainstream users are also finding the benefits of the new ethics of sharing information, a myriad of people leave their computers on 24 hours a day to allow other Internet users to download anything from digital music to the latest movies from their hard drives using technologies like Napster or IRC chat servers, and yet these people are not earning a penny for their efforts. Many other users, including academics, professionals and researches, provide help in specialised Usenet newsgroups in fields as varied as literature, law, astronomy, physics and biology. Knowledgeable users usually do not have any problems in providing help to less experienced newcomers. In message boards all across the Web, people are sharing ideas and posting information knowing that they will not earn any copyright from their writings. Inventors and scientist share experiences. It is also common to find pages where the information provided is made available to the public with the only requisite that the author is identified. Music groups, aspiring poets, new writers, painters and amateur photographers have no qualms about offering their creations for free over the Net, hoping that they will be noticed.

The sharing revolution is being spearheaded by this sense of freedom. Anybody can be an editor on the Internet, anybody can post their stories, holiday photographs, crude animations, bad jokes and recipes online. There is no censor, nobody to say that your work is not good enough for publication, the community is the ultimate reviewer. As expressed by Michael Lewis, the outsiders have become insiders (Lewis, 2001).

Conclusion

The Internet presents us with an impressive tool for distributing intellectual creations to the widest possible audience. In Cyberspace we are starting to witness the diluting of authorship by the practice of legions of writers, musicians, inventors and artists that see the Internet as the best medium in which to present the products of their intellectual labour, even if it means to do it for free. At the same time that multinational corporations

monopolise distribution channels, independent authors are faced with a new medium in which anybody can be a publisher. It does not matter in the end if there is no profit, what matters to new generations of authors is to present their works to the widest possible audience even by practically relinquishing the rights to their creations. It may be contended that once they become famous this selfless attitude will vanish and greed will take over, but one fact remains, there is a shift in the traditional perception of authorship.

Poets and writers are sharing their works online; garage bands are posting their music trying to become famous, anonymous posters on message boards writing elaborate pieces of work. All of the described phenomena serve to paint the picture that the present system of intellectual property protection is under serious attack on the Internet.

The new sharing ethic on the Internet relies mostly on the understanding that cooperation between authors is immensely beneficial and that one of the most important aspects of intellectual property is to insure the dissemination of information. If the legislation is more restrictive, then this important aspect of the ownership of ideas certainly suffers. The Internet is redressing this perceived imbalance by providing the perfect ground to allow a better flow of ideas throughout the globe; the new digital world knows no boundaries and resents the attempts by the establishment to put a stop to sharing of data.

Advocating for an increase in the free flow of information online should not be equated with abolitionism of existing intellectual property legislation, but it is clear that a reform of the system is long overdue as it has become obvious that at present it is not properly designed to respond to digital content and everyday sharing of information.

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